

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SUE ELLEN DUMDIE, Individually and  
on Behalf of all Others Similarly Situated,

Lead  
Plaintiff,

v.

WM TRUST I, WM TRUST II, WM  
STRATEGIC ASSET MANAGEMENT  
PORTFOLIOS, LLC, WM ADVISORS,  
INC., WM FUNDS DISTRIBUTOR, INC.,  
WILLIAM G. PAPESH, DANIEL L.  
PAVELICH, RICHARD C. YANCY,  
KRISTIANNE BLAKE, EDGE ASSET  
MANAGEMENT, INC., PRINCIPAL  
FINANCIAL GROUP, INC., PRINCIPAL  
INVESTORS FUND, INC., PRINCIPAL  
FUNDS DISTRIBUTOR, INC.,

Defendants.

No. C-08-1251 MJP

**DEFENDANTS' MOTION TO FILE OVER-  
LENGTH MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF  
STIPULATED DISMISSAL**

Noted for Consideration: March 25, 2009

Action filed: August 20, 2008

MOTION FOR OVER-LENGTH BRIEF  
NO. C-08-1251 MJP

  
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1 Defendants<sup>1</sup> file this motion under Local Rule 7(f) to request permission from the Court  
 2 to file an over-length memorandum of points and authorities in support of the Parties'  
 3 concurrently filed stipulation to dismiss this action. Specifically, because Local Rule 7(e)(1)  
 4 limits filings noted under Local Rule 7(d)(1) to six pages, Defendants request an additional four  
 5 pages for their memorandum, plus an additional three pages if the Parties' stipulated voluntary  
 6 dismissal counts against the page limit.

7 Defendants' intent in filing their memorandum in support of the stipulation is to set forth  
 8 the reasons for the dismissal, the law that governs a dismissal in this setting and the grounds  
 9 supporting entry of a dismissal in this case. In short, because this dismissal under Federal Rule  
 10 of Civil Procedure 41(a)(1)(A) is voluntarily made prior to class certification, the 2003  
 11 amendments to Federal Rule of Civil Procedure 23(e) make it clear that notice to the class and  
 12 court approval are not required. This 2003 amendment effectively overruled earlier cases,  
 13 including the Ninth Circuit's holding in *Diaz v. Trust Territory of the Pacific Islands*, 876 F.2d  
 14 1401 (9th Cir. 1989), which had interpreted an earlier version of Rule 23(e) to require court  
 15 review of a pre-certification dismissal to determine whether notice to the class was required.  
 16 Nonetheless, in the wake of the 2003 amendment—and despite Rule 23(e)'s new language—  
 17 some district courts in this circuit have continued to apply the pre-2003 version of Rule 23(e)  
 18 and the *Diaz* precedent in this setting. The Defendants' memorandum seeks to clarify the law  
 19 for voluntary dismissals in this context in light of this inconsistent application of the post-2003  
 20 Rule 23(e). It also explains why even if *Diaz*'s holding did apply, the Parties would still not be  
 21 required to provide notice to the putative class as a condition of dismissal here.

22  
 23  
 24  
 25 <sup>1</sup> The term "Defendants," as used herein, refers to defendants WM Trust I, WM Trust II, WM Strategic Asset  
 26 Management Portfolios, LLC, WM Advisors, Inc., WM Funds Distributor, Inc., William G. Papesh, Daniel L.  
 Pavelich, Richard C. Yancey, Kristianne Blake, Edge Asset Management, Inc., Principal Financial Group, Inc.,  
 Principal Investors Fund, Inc., and Principal Funds Distributor, Inc.

1 Because of the analysis required to tackle these issues, the Defendants respectfully  
2 request that the Court grant this application to file their over-length memorandum in support of  
3 the Parties' stipulated dismissal.

4 DATED: March 25, 2009

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